REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BAC-MAN GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9728

Members:

DEL ROSARIO, *P.J.,Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the Petition for Review[1] filed by Bac-Man Geothermal Inc. on December 5, 2017 praying for the cancellation and withdrawal of the deficiency income tax assessment, inclusive of interest and compromise penalty, issued against it for taxable year 2013 amounting to ₱175,900,963.76.

THE PARTIES

Petitioner Bac-Man Geothermal Inc. (petitioner) is a domestic corporation duly organized and existing under Philippine Laws, with principal office at 40F One Corporate Centre, Julia Vargas Avenue corner Meralco Avenue, Ortigas Center, Pasig.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 007-721-206-00000.[3] It is engaged in the business of producing energy through, among others, renewable energy resources.[4]

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[1] Docket - Vol. I, pp. 10-193.
[2] Paragraph I (1), Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. II, p. 706; Exhibit "P-1", Docket - Vol. III, pp. 1539, 1543,
[3] Exhibit "P-2", Docket - Vol. III, p. 1555.
[4] Memorandum, Docket - Vol. VII, p. 4126; Exhibit "P-1", Docket - Vol. III, pp. 1541.

Respondent Commissioner of Internal Revenue (CIR/respondent)[5] is the duly appointed head of the BIR and vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended.

THE FACTS

The National Power Corporation (NPC), a government-owned and controlled corporation, previously owned and operated the Bac-Man Geothermal Power Plants (BGPP) in Bacon, Sorsogon and Manito, Albay which were in commercial operations under NPC since 1993.[6]

In 2010, the Power Sector Assets and Liabilities Management Corporation (PSALM), pursuant to Republic Act No. 9136 or the Energy Power and Industry Reform Act (EPIRA), sold the BGPP to petitioner.[7]

On May 8, 2012, petitioner was registered with the Department of Energy (DOE) as a renewable energy (RE) Developer of the BGPP under Certificate of Registration No. GOC 2012-04-039.[8]

On February 14, 2013, the Board of Investments (BOI) issued Certificate of Registration No. 2013-048 to petitioner as "Renewable Energy Developer of 130 MW Power Plant Complex" in accordance with the provisions of the Omnibus Investments Code of 1987, as amended.[9]

On April 10, 2014, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2013. Based on its Annual ITR, petitioner subjected to 10% corporate income tax rate its income during the testing and commissioning period of the BGPP amounting to ₱676,998,958.00.[10]

On January 10, 2017, petitioner received Letter of Authority No. SN:eLA201500034554 dated January 5, 2017 signed by Teresita M.

[5] The incumbent CIR is Hon. Caesar R. Dulay.
[6] Paragraph 5, Petition for Review (PFR), Docket - Vol. I, p. 11; Exhibit "P-20-e-1" p. 3079; Exhibit "P-20-e-2", Docket – Vol. V, p. 3084.
[7] Paragraph 6, PFR, Docket - Vol. I, p. 12; Exhibit "P-16", Docket - Vol. IV, pp. 1884-2137.
[8] Paragraph 7, PFR, Docket - Vol. I, p. 12; Exhibit "P- 3-a", Docket - Vol. III, p.1557.
[9] Paragraph 8, PFR, Docket - Vol. I, p. 12; Exhibit "P-3-c", Docket - Vol. III, p. 1559.
[10] Paragraph 9, PFR, Docket - Vol. I, p. 12; Exhibit "P-12", Docket - Vol. III, pp. 1593-1601.

Angeles, OIC-Assistant Commissioner, Large Taxpayers Service,[11] authorizing Revenue Officers (RO) Cletofel Parungao, Ana Veronica Asis, Rogelio Gonzales, Ma. Daisy Loyola and Group Supervisor (GS) Edgar Espiritu to examine its books of accounts and other accounting records for corporate income tax for the period from January 1, 2013 to December 31, 2013.

On January 18, 2017, petitioner received the undated Preliminary Assessment Notice (PAN) with Details of Discrepancy.[12] On February 2, 2017, petitioner filed its Reply to the PAN[13] and Nestor H. Vasay, Senior Vice-President and Chief Financial Officer of petitioner, executed a Waiver of the Statute of Limitations Under the National Internal Revenue Code, extending the period to assess petitioner for income tax liabilities for taxable year ending December 31, 2013 until December 31, 2017.[14]

On July 5, 2017, petitioner received the Formal Letter of Demand (FLD) dated July 3, 2017 with Details of Discrepancies and Audit Result/Assessment Notice dated June 15, 2017.[15] On August 4, 2017, petitioner filed a Request for Reinvestigation against the FLD.[16] On October 3, 2017, it submitted additional documents in support thereof.[17]

On November 6, 2017, petitioner received the Final Decision on Disputed Assessment (FDDA) dated October 30, 2017,[18] assessing it of deficiency income taxes and administrative penalties, totaling ₱175,900,963.76, broken down as follows:

TAX TYPE	BASIC		INTEREST		COMPROMISE		TOTAL	
Income Tax	₱	102,861,541.30	₱	72,989,422.46			₱	175,850,963.76
Administrative Penalties					₱	50,000.00		50,000.00
TOTAL	₱	102,861,541.30	₱	72,989,422.46	₱	50,000.00	₱	175,900,963.76

[11] Paragraph 10, PFR, Docket - Vol. I, p. 12; Exhibit "P-4", Docket - Vol. III, p. 1560; Exhibit "R-1", BIR Records, p. 276.
[12] Paragraph 11, PFR, Docket - Vol. I, pp. 12-13; Exhibit "P-5", Docket - Vol. III, p. 1561-1563; Exhibit "R-2", BIR Records, pp. 287-289.
[13] Paragraph 12, PFR, Docket - Vol. I, p. 12; Exhibit "P-6", Docket - Vol. III, pp. 1564-1568.
[14] Paragraph 13, PFR, Docket - Vol. I, p. 13; Exhibit "P-7", Docket - Vol. III, p. 1569; Exhibit "R-3", BIR Records, p. 290.
[15] Paragraph 14, PFR, Docket - Vol. I, pp. 13-14; Exhibit "P-8", Docket - Vol. III, pp. 1570-1572; Exhibit "R-4", pp. 333-334.
[16] Paragraph 15, PFR, Docket - Vol. I, p. 14; Exhibit "P-9", Docket - Vol. III, pp. 1573-1586; Exhibit "R-7", pp. 454-456.
[17] Paragraph 16, PFR, Docket - Vol. I, p. 14; Exhibit "P-10", Docket - Vol. III, pp. 1588-1589.
[18] Paragraph 17, PFR, Docket - Vol. I, p. 14; Exhibit "P-11", Docket - Vol. III, pp. 1590-1592.

Unfazed, petitioner filed the present Petition for Review docketed as CTA Case No. 9728.

The Petition for Review was initially raffled to the Court of Tax Appeals (CTA) - Second Division. With the reorganization of the Divisions of the CTA, it was transferred to the CTA - First Division on September 24, 2018.[19]

Summonses were served upon respondent on December 20, 2017 and the Office of the Solicitor General on December 19, 2017.[20]

On February 2, 2018, within the extended period,[21] respondent filed his Answer,[22] raising the following arguments:

1) Petitioner is liable for deficiency Income Tax and Compromise Penalty in the aggregate amount of ₱175,900,963.76 since it is not entitled to the special corporate income tax rate of 10% having commenced its commercial operation only on July 1, 2013;

2) Although NPC operated the BGPP since 1990, it is not a Renewable Energy (RE) Developer. Hence, petitioner cannot be considered to have been in commercial operation for more than seven (7) years;

3) Respondent's right to assess petitioner has not yet prescribed because petitioner executed a waiver of the Statute of Limitations on February 2, 2017 and it is estopped from assailing its validity *citing Commissioner of Internal Revenue vs. Next Mobile, Inc.;*[23]

4) Petitioner was informed of the facts and the law upon which the assessment was based as clearly stated in the Details of Discrepancies attached to the PAN and FLD; and,

5) Petitioner is liable to pay Compromise Penalty pursuant to Revenue Memorandum Circular (RMC) No. 19-2007, citing

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[19] Order dated September 24, 2018; Docket - Vol. III, p. 1364.
[20] Docket - Vol. I, pp. 194 and 200.
[21] Order dated January 8, 2018, Docket - Vol. I, p. 199.
[22] Docket - Vol. I, pp. 205-214.
[23] G.R. No. 21825, December 7, 2015.

Commissioner of Internal Revenue vs. Filinvest Development Corporation.[24]

He prays that the Petition for Review be dismissed for lack of jurisdiction, the assessment be upheld and, petitioner be ordered to pay the assessment plus 25% surcharge and 20% deficiency and delinquency interests for late payment until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

The Pre-Trial Conference was set on March 15, 2018.[25]

On February 19, 2018, petitioner filed a Reply (Re: Respondent's Answer dated February 1, 2018).[26]

Respondent's Pre-Trial Brief[27] was filed on March 6, 2018 and Petitioner's Pre-Trial Brief[28] was filed on March 9, 2018.

During the Pre-Trial Conference on March 15, 2018, the parties were given twenty (20) days within which to file their Joint Stipulation of Facts and Issues (JSFI), which was extended until May 4, 2018 upon their motion.[29] On May 7, 2018, the parties belatedly filed their JSFI.[30]

On May 16, 2018, the Pre-Trial Order[31] was issued, approving the JSFI and terminating the Pre-Trial.

During trial, petitioner presented four (4) witnesses, namely, Liberato Virata,[32] the Vice President for Energy Development Corporation's (EDC) Bac-Man Geothermal Business Unit; Charles Remy S. Capaque,[33] the Tax Compliance Officer of EDC; Marcel

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[24] G.R. No. 163653, July 19, 2011.
[25] Docket - Vol. I, p. 215.
[26] Docket - Vol. I, pp. 217-236.
[27] Docket - Vol. I, pp. 237-241.
[28] Docket - Vol. I, pp. 242-257.
[29] Docket - Vol. II, p. 680; Order dated April 25, 2018, Docket Vol. II, p. 700.
[30] Docket - Vol. II, pp. 706-719
[31] Docket - Vol. II, pp. 722-731.
[32] Exhibit "P-22", Docket - Vol. III, pp. 1211-1222; Order dated July 4, 2018, Docket - Vol. III, pp. 1224.
[33] Exhibit "P-21", Docket – Vol. II, pp. 732-1158; Order dated May 23, 2018, Docket - Vol. II, p. 1187.

Rosario,[34] OIC-Plant Manager of the BGPP; and, Ray-an Francis V. Baybay, Legal Counsel of EDC.[35]

On April 2, 2019, petitioner filed its Formal Offer of Evidence (with Motion to Admit Secondary Evidence).[36] In the Resolution dated June 4, 2019,[37] petitioner's Motion to Admit Secondary Evidence was denied and its offered Exhibits "P-71-a", "P-17-b", "P-18", "P-19-c", "P-19- d", "P-19-f", "P-19-g", "P-19-h", "P-19-z", "P-19-aa", "P-19-cc", "P-19-dd", "P-19-ff", "P-19-gg", "P-19-hh", "P-19-ii", "P-19-ll", "P-19-nn", "P-19-oo", "P-19-pp", "P-19-qq", "P-19-rr", "P-19-ss", "P-19-tt", "P-19-xx", "P-19-yy", "P-19-zz", "P-19-aaa", "P-19-bbb", "P-19-ccc", "P-19-ddd", "P-19-fff", and "P-19-hhh" were denied admission in evidence, for failure to comply with the requisites for admissibility as secondary evidence.

On July 2, 2019, respondent presented its lone witness, RO Cletofel V. Parungao.[38] On the same day, petitioner filed a Motion for Reconsideration (Re: Resolution dated June 4, 2019) (with Motion for Leave to Present Supplemental Evidence).[39]

On July 15, 2019, respondent filed his Formal Offer of Evidence.[40]

In the Resolution dated September 10, 2019,[41] petitioner's Motion for Leave to Present Supplemental Evidence was granted, the hearing on petitioner's presentation of its supplemental evidence was set on November 5, 2019 and the resolution of petitioner's Motion for Reconsideration (Re: Resolution dated June 4, 2019) and respondent's Formal Offer of Evidence was held in abeyance.

The November 5, 2019 Hearing was reset to September 17, 2020,[42] during which petitioner's recalled witness, Ray-an Francis V. Baybay[43] was presented.

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[34] Exhibit "P-23", Docket - Vol. II, pp. 1196-1203; Order dated July 4, 2018, Docket - Vol. III, pp. 1224.
[35] Exhibit "P-24", Docket - Vol. III, pp. 1239-1359; Order dated September 5, 2018, Docket - Vol. III, p. 1362; Exhibit "P-25", Docket - Vol. III, pp. 1381-1443; Order dated February 12, 2019, Docket - Vol. III, pp. 1447-1448.
[36] Docket - Vol. III, pp. 1506-3109.
[37] Docket - Vol. V, pp. 3123-3132.
[38] Docket - Vol. III, pp. 1456-1487; Order dated July 2, 2019, Docket - Vol. V, pp. 3134-3138.
[39] Docket - Vol. V, pp. 3141-3153.
[40] Docket - Vol. V, pp. 3157-3162.
[41] Docket - Vol. V, pp. 3192-3200.
[42] Order dated November 5, 2019, Docket - Vol. VI, pp. 3207-3212.
[43] Exhibit "P-26", Docket - Vol. VI, pp. 3216-3487; Order dated September 17, 2020, Docket - Vol. VII, pp. 3497-3502.

On September 28, 2020, petitioner filed its Supplemental Formal Offer of Evidence.[44]

In the Resolution dated December 11, 2020,[45] petitioner's offered Exhibits "P-20-f", "P-20-g", "P-26" and "P-26-a" and all of respondent's offered exhibits were admitted in evidence while petitioner's Motion for Reconsideration (Re: Resolution dated June 4, 2019) was denied. The parties were given thirty (30) days from receipt of the Resolution to file their respective memoranda.

Petitioner filed its Memorandum[46] on January 27, 2021 while respondent filed his Memorandum on January 29, 2012. Thus, the case was submitted for decision on February 15, 2021.[47]

THE ISSUES

The parties stipulated the following issues for the resolution of the Court:

"(a) WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY INCOME TAX FOR TY 2013 HAS PRESCRIBED.

(b) WHETHER OR NOT RESPONDENT'S ASSESSMENT IS VOID FOR FAILURE TO COMPLY WITH THE STANDARDS OF DUE PROCESS AND TO INFORM PETITIONER OF THE LAW AND THE FACTS UPON WHICH THE ASSESSMENT WAS BASED.

(c) WHETHER OR NOT DEFICIENCY ASSESSMENT AND INTEREST FOR THE PERIOD OF JANUARY 1, 2013 TO JUNE 30, 2013 IN THE AMOUNT OF PHP175,900,963.76 HAS FACTUAL AND LEGAL BASIS.

(d) WHETHER OR NOT PETITIONER IS LIABLE TO PAY COMPROMISE PENALTY ON THE ALLEGED DEFICIENCY INCOME TAX."[48]

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[44] Docket - Vol. VI, pp. 3504 – 4107.
[45] Docket - Vol. VII, pp. 4118-4124.
[46] Docket - Vol. VII, pp. 4125-4167.
[47] Resolution dated February 15, 2021; Docket - Vol. VII, p. 4179.
[48] Paragraph II, JSFI, Docket - Vol. II, p. 707.

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THE PARTIES' ARGUMENTS

Petitioner's arguments[49]

Petitioner contends that the assessment against it is null and void based on the following:

1. Respondent's right to assess petitioner for deficiency Income Tax had already prescribed as the Waiver executed by petitioner is null void for failure to comply with the requirements for a valid waiver under Section 222 (b) of the NIRC of 1997, as amended, in relation to Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01. Particularly, the Waiver failed to specify the amount of tax subject of the assessment and respondent failed to require the presentation of the notarized written authority from petitioner's Board of Directors authorizing the execution of the waiver;

2. Petitioner cannot be estopped from assailing the validity of the waiver as its validity was timely contested;

3. Respondent failed to comply with the standards of due process, specifically: *(i)* the PAN and FLD did not provide adequate factual basis of the assessment; *(ii)* the FLD failed to consider and address petitioner's explanation in the Reply to the PAN; *(iii)* the FDDA failed to state the legal and factual basis of the assessment; and *(iv)* the FDDA is likewise void for failing to specify a definite due date for the payment of the deficiency tax assessment;

4. Assuming *arguendo* that the assessment has not prescribed and was validly issued, the deficiency income tax for TY 2013 should still be cancelled and withdrawn for lack of legal and factual bases as petitioner is an RE Developer and that the BGPP are RE Facilities that have been in operation for more than seven (7) years upon the effectivity of the RE Act; and,

5. Petitioner cannot be compelled to pay compromise penalty without its consent.

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[49] Docket - Vol. VII, pp. 4132-4166.

Respondent's arguments[50]

Expectedly, respondent argues that petitioner is liable for deficiency Income Tax and Compromise Penalty in the aggregate amount of ₱175,900,963.76 for TY 2013. He reiterates his arguments in his Answer that: *(i)* his right to assess petitioner has not yet prescribed and *(ii)* petitioner was informed of the facts and the law upon which the assessment was based.

THE COURT'S RULING

Timeliness of the Petition for Review

The Court shall first determine the timeliness of the filing of the present Petition for Review.

Section 228 of the NIRC of 1997, as amended, governs the protest on assessment of taxpayers. It is implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which provides the procedure in the issuance of assessments as well as how to protest them, to wit:

> "3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; ***otherwise, the assessment shall be void*** (see illustration in ANNEX "B" hereof).
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> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> > (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional

[50] Docket - Vol. VII, pp. 4169-4174.

evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer

> **may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request [for] reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision.** Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
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> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other." *(Boldfacing supplied)*

Applying the foregoing, petitioner had thirty (30) days or until August 4, 2017 to file its protest on the FLD having received the same on July 5, 2017 and, sixty (60) days from filing of such protest to submit additional supporting documents, if it is requesting for a reinvestigation. As petitioner was able to file its Request for Reinvestigation on August

4, 2017 and submit its additional supporting documents on October 3, 2017, its Request for Reinvestigation against the FLD prevented the assessment from becoming final, executory and demandable.

Petitioner received the FDDA issued by respondent's representative, OIC-Assistant Commissioner Teresita M. Angeles of the Large Taxpayers Service, denying its Request for Reinvestigation on November 6, 2017. Under the regulations, it has thirty (30) days from receipt thereof or until December 6, 2017 to either file an appeal with the CTA or the CIR.

Relatedly, Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), pertinently states in part:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

With the filing of the present Petition for Review on December 6, 2017, the Court finds that it was filed within the period prescribed under Section 3 (a), Rule 8 of the RRCTA.

Prescription of the Right to Assess

Section 203 of the NIRC of 1997, as amended, limits the CIR's right to assess and collect internal revenue taxes to three (3) years, *viz.*:

> "SECTION 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within **three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Boldfacing supplied)*

Among the exceptions to the three (3)-year prescriptive period on the assessment and collection of internal revenue taxes is a written agreement between the CIR and taxpayer extending such period, as provided under Section 222 (b) of the NIRC of 1997, which reads:

> "SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

For income tax purposes, Section 77(B), in relation to Section 76 of the NIRC of 1997, as amended, requires every corporation liable to tax to file a final adjustment return on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

In the case at bar, petitioner filed its Annual ITR for 2013 on April 10, 2014, ahead of the April 15, 2014 prescribed date for filing of the Annual ITR for 2013. Thus, respondent only had until April 15, 2017 to assess petitioner for deficiency Income Tax unless the three (3)-year period to assess was validly extended by the Waiver executed on February 2, 2017.

Validity of the Waiver of the Statute of Limitations

At the time of the execution of the subject Waiver on February 2, 2017, RMO No. 14-2016 is the relevant issuance of the BIR setting forth the guidelines in the execution of waivers of the statute of limitations under Section 222 of the NIRC of 1997, as amended, amending those provided in RMO No. 20-90 and RDAO No. 05-01:

> "III. Guidelines
>
> 1. The waiver may be, but not necessarily, in the form prescribed by RMO No. 20-90 or RDAO No. 05-01. The taxpayer's failure to follow the aforesaid forms does not invalidate the executed waiver, for as long as the following are complied with:

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a) The Waiver of the Statute of Limitations under Section 222 (b) and (d) shall be executed before the expiration of the period to assess or to collect taxes. The date of execution shall be specifically indicated in the waiver;

b) The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials;

c) The expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be indicated.

2. Except for waiver of collection of taxes which shall indicate the particular taxes assessed, **<u>the waiver need not specify the particular taxes to be assessed nor the amount thereof</u>, and it may simply state "all internal revenue taxes"** considering that during the assessment stage, the Commissioner of Internal Revenue or her duly authorized representative is still in the process of examining and determining the tax liability of the taxpayer.

3. **Since the taxpayer is the applicant and the executor of the extension of the period of limitation for its benefit in order to submit the required documents and accounting records, the taxpayer is charged with the burden of ensuring that the waivers of statute of limitation are validly executed by its authorized representative. The authority of the taxpayer's representative who participated in the conduct of audit or investigation shall not be thereafter contested to invalidate the waiver.**

4. The waiver may be notarized. However, it is sufficient that the waiver is in writing as specifically provided by the NIRC, as amended.

5. Considering that the waiver is a voluntary act of the taxpayer, the waiver shall take legal effect and be binding on the taxpayer upon its execution thereof.

6. It shall be the duty of the taxpayer to submit its duly executed waiver to the Commissioner of Internal Revenue or official/s previously designated in existing issuances or the concerned revenue district officer or group supervisor as designated in the Letter of Authority/Memorandum of Assignment who shall then indicate acceptance by signing the same. Such waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect. The taxpayer shall have the duty to retain a copy of the accepted waiver.

7. Note that there shall only be two (2) material dates that need to be present on the waiver:

> a) The date of execution of the waiver by the taxpayer or its authorized representative; and
>
> b) The expiry date of the period the taxpayer waives the statute of limitations.
>
> 8. Before the expiration of the period set on the previously executed waiver, the period earlier set may be extended by subsequent written waiver made in accordance with this Order." *(Boldfacing and underscoring supplied)*

Under RMO No. 14-2016, there are two (2) material dates that need to be indicated on the Waiver, *viz.*: *(i)* the date of execution of the waiver by the taxpayer or its authorized representative; and, *(ii)* the expiry date of the period the taxpayer waives the statute of limitations. The aforesaid RMO further provides that the waiver need not specify the particular taxes to be assessed or the amount thereof, and may simply state "all internal revenue taxes". In addition, the taxpayer is charged with the burden of ensuring that the waivers of statute of limitation are validly executed by its authorized representative.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[51] the Supreme Court ruled that RMO No. 20-90, an issuance by the BIR on the proper execution of the waiver of the statute of limitations under the NIRC, must be strictly followed and pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription,[52] *viz.*:

> "RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that **the RMO must be strictly followed**, thus:
>
> xxx xxx xxx
>
> **A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed**. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of

[51] G.R. No. 162852, December 16, 2004.
[52] *Commissioner of Internal Revenue vs. Standard Chartered Bank,* G.R. No. 192173, July 29, 2015.

> safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. **Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed**.xxx" *(Boldfacing supplied)*

Thus, to extend the CIR's right to assess and collect internal revenue taxes, waivers executed from April 4, 2016 onwards must strictly comply with RMO No. 14-2016.

Scrutiny of the subject Waiver shows the following:

1) It was executed on February 2, 2017, before the three (3)-year period to assess, by its responsible officer, Nestor H. Vasay, as Senior Vice President and Chief Financial Officer of petitioner albeit the acknowledgment portion of the Waiver identifies him as "Nestor H. Vasay, xxx, in his capacity as Senior Vice President and Chief Financial Officer of EDC";

2) The Waiver states that it consents to the assessment and/or collection of tax or taxes which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by the NIRC but not later than December 31, 2017; and,

3) The Waiver was received by respondent's representative on February 13, 2017, and notarized on the same date.

All these show that the Waiver is compliant with RMO No. 14-2016. Consequently, the suspension of the prescriptive period within which to issue the subject assessment legally took effect. The three (3)-year period to assess the subject deficiency income tax was extended until December 31, 2017 and the FLD dated July 3, 2017, was timely issued within the agreed extended period to assess.

Compliance with Due Process Requirements in the Issuance of the Assessment

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[53]

The afore-cited Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, explicitly require that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. **The law mandates that the bases be reflected in the preliminary assessment notice, formal letter of demand, final assessment notice and final decision on the disputed assessment.**[54] This cannot be presumed, otherwise, the express mandate of Section 228 and RR No. 12-99, as amended, would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The PAN indicated Section 249 (B) of the NIRC of 1997, as amended, as the basis for the imposition of interests; and Sections 250 and 255 of the NIRC of 1997, as amended, in relation to RMO No. 1-90, RMO No. 19-2007, as amended by RMO No. 7-2015, as grounds for the imposition of compromise penalty, *viz.*:

> "The 20% interest per annum has been imposed pursuant to the provision of Section 249 (B) of the National Internal Revenue Code of 1997, as amended.
>
> The compromise penalty was imposed pursuant to Sections 250 and 255 of the Tax Code, with reference to RMO No. 1-90, RMO No. 19-2007, as amended by RMO No. 7-2015.
>
> Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency tax liabilities thru EFPS using the BIR Payment Form (BIR Form 0605). xxx"

The attached Details of Discrepancy stated that: *(i)* subjecting petitioner's taxable income to 10% special income tax rate is in violation of Chapter VII, Sec. 15, paragraph e of Republic Act No. 9513 (RA 9513); and, *(ii)* petitioner's taxable income should be subject to the regular corporate income tax rate of 30% pursuant to Section 27(A) of the NIRC of 1997, as amended, to wit:

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[53] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* and *Avon Products Manufacturing Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[54] *Id.*

"Differential Tax Due on Taxable Income Subjected to 10% Special Rate - P102,831,541.30

Verification disclosed that the taxpayer subjected to 10% income tax rate the taxable income reported in the ITR as "Total Special" in violation of Chapter VII, Sec. 15, par. E of the Republic Act No. 9513, pertinent provisions of which are quoted as follows:

> 'Corporate Tax Rate - After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.'

Since the taxpayer's ITH Incentive commenced on July 1, 2013 only, it cannot use yet the special income tax rate of ten percent (10%); thus, the adjustable taxable income was assessed and subjected to regular income tax rate of 30% pursuant to Section 27(A) of the NIRC, as amended. (see attached PAN Details)"

As to the factual basis of the assessment, attached to the PAN is the computation marked as Annex "A". The figures therein were lifted from petitioner's Annual ITR for 2013 and Audited Financial Statements (AFS) for Taxable Year 2013. Respondent's "Per Review" figures were derived by recomputing petitioner's taxable income based on respondent's stance that its income for the period January to June 2013 is subject to 30% regular corporate income tax and not 10% special income tax rate as petitioner insists.

Based on the attached computation, the basic tax deficiency of ₱102,831,541.30 was computed as the difference between respondent's recomputed income tax due and petitioner's unadjusted income tax due, as shown below:

	Taxable Amount	Tax Rate	Tax Due
Income Tax Due – Special Rate per Review/BIR @ 30%	₱ 551,585,811.00	30%	₱ 165,469,743.30
Income Tax Due – Special Rate per ITR @ 10%	626,082,020.00	10%	62,608,202.00
Deficiency Income Tax			**₱ 102,861,541.30**

Respondent determined that gross sales/revenues amounting to ₱281,881,967.00 originally claimed by petitioner as taxable under the 30% regular corporate income tax should be added to the gross sales/revenues originally reflected by petitioner under the 10% special income tax rate. Moreover, cost of sales/services amounting to ₱338,113,517.00 was transferred from the 30% regular corporate income tax column to the cost of sales/services under the 10% special income tax column. These two adjustments resulted in a net reduction of ₱56,231,551.00 in the gross income under the 10% special income tax column, or from ₱676,998.958.00 to ₱620,767,407.00. Deducting the adjusted general and administrative expenses and other charges amounting to ₱69,201,596.00 from the adjusted gross income per respondent's review in the amount of ₱620,767,407.00, the adjusted net income before income tax is now at ₱551,585,811.00. As previously stated, respondent insists that the net income before income tax is subject to 30% regular income tax and not to 10% special income tax. Thus, respondent computed that the income tax due should be ₱165,469,743.30, which is 30% of the adjusted net income before income tax of ₱551,585,811.00.

Considering that petitioner subjected its net income of ₱626,082,020.00 to 10% special income tax and that the resulting tax due thereon amounted to ₱62,608,202.00, respondent deducted the latter amount from the recomputed income tax due of ₱165,469,743.30, hence, the deficiency income tax amounting to ₱102,861,541.30.

In fine, the Court finds the PAN compliant with Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended.

With respect to the FLD, as pointed out by petitioner, the FLD is a verbatim reproduction of the wordings of the PAN, differing only in the computation of the interest. The FLD also neither referred to petitioner's Reply nor addressed its arguments therein. Worse, the FLD was not even accompanied with a computation sheet.[55] Since the FLD failed to inform petitioner of the reasons for his apparent rejection of its arguments in the Reply, respondent failed to observe the standards of due process, as hereafter discussed.

Further, a careful examination of the FDDA shows that while it mentioned petitioner's Request for Reinvestigation, *i.e.* Letter dated August 4, 2017, **it again miserably failed to address petitioner's**

[55] Exhibit "R-6", BIR Records, p. 445.

arguments raised therein and merely repeated the contents of the PAN and FLD. This once more is a transgression of respondent's duty to inform petitioner of the reasons for his apparent rejection of the arguments stated in petitioner's Request for Reinvestigation.

Incidentally, the Court notes that the revenue officers involved in this case prepared a Memorandum dated May 15, 2017[56] and another Memorandum dated October 10, 2017[57]. The Memoranda indicate the reasons for the rejection of petitioner's arguments as alleged in the Reply and Request for Reinvestigation. **For reasons known only to respondent, he deliberately or otherwise did not communicate these reasons in the FLD and FDDA to petitioner.**

Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing Inc. vs. Commissioner of Internal Revenue[58] *("Avon")* stresses the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, **to consider the explanations or defenses raised by the taxpayer** in connection with the assessments, and further instructs that **the reason for the rejection of such explanations or defenses be communicated to taxpayers**, even as it clarified that the CIR is not obliged to accept the taxpayer's submissions at face value, **lest the assessment be deemed void**:

> "**The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; **otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void**. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. **Failure to do so would invalidate the Final Decision on Disputed Assessment.**
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> xxx xxx xxx
>
> **On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the**

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[56] BIR Records, pp. 325-323.
[57] Exhibit "R-6", BIR Records, pp. 444-447.
[58] *Supra*, Note 53.

process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **<u>did not even comment or address the defenses and documents submitted by Avon</u>**. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. <u>The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.</u>

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of

Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that '[Avon] failed to submit supporting documents within 60-day period.' This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulations No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. <u>However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record</u>.

<u>Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.</u> The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

xxx xxx xxx

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.**
>
> xxx xxx xxx
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void.**" *(Boldfacing and underscoring supplied)*

Indeed, issuing the FLD which is an exact replica of the PAN, *sans* any indication in the FLD that due consideration was accorded on petitioner's explanations or arguments as stated in its Reply to the PAN, is fatal to respondent's cause. The issuance of a PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a final assessment notice.[59] **To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's reply thereon.**

In sum, the Court finds that the FLD dated July 3, 2017, with Details of Discrepancies and Audit Result/Assessment Notice dated June 15, 2017 are void and without any legal significance for respondent's wanton disregard of the due process requirements of Section 228 of the NIRC of 1997, as amended, RR No. 12-99, as amended, and *Avon*. Consequently, the subject assessment for deficiency income tax and administrative or compromise penalty has no legal mooring to stand on.

In light of the foregoing, the Court will no longer belabor the other issues raised in the present Petition.

WHEREFORE, premises considered, Bac-Man Geothermal, Inc.'s Petition for Review filed on December 5, 2017 is hereby **GRANTED**. Formal Letter of Demand dated July 3, 2017 and Audit Result/Assessment Notice No. F-LA010001-IT-121-2013-06-17-0000001024 dated June 15, 2017 are **CANCELLED** and

[59] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WITHDRAWN and the Final Decision on Disputed Assessment dated October 30, 2017 is **SET ASIDE**.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency income tax assessment against Bac-Man Geothermal, Inc. arising from the Formal Letter of Demand dated July 3, 2017 and Audit Result/Assessment Notice No. F-LA010001-IT-121-2013-06-17-0000001024 dated June 15, 2017 and Final Decision on Disputed Assessment dated October 30, 2017. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice